

California High-Speed Rail Authority



RFP No.: HSR 14-32

**Request for Proposal for Design-Build
Services for Construction Package 4**

**Book II, Part B.9 – County of Tulare
Cooperative Agreement**

COOPERATIVE AGREEMENT
BETWEEN
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
AND
COUNTY OF TULARE

PARTIES:

THIS AGREEMENT, entered into as of the date last written below (the “Agreement”) by and between the California High-Speed Rail Authority, an agency of the State of California, whose principal place of business and mailing address is 770 L Street, Suite 620 MS 2, Sacramento, California 95814, hereinafter referred to as the “Authority”, and County of Tulare, a political subdivision of the State of California, whose principal mailing address is 2800 W Burrell Ave, Visalia, CA 93219-4582 hereinafter referred to as the “Local Agency”.

RECITALS:

WHEREAS, Local Agency owns, operates, and maintains Facilities, as defined herein. Utilities or facilities not owned by Local Agency may be located within the right-of-way of Local Agency by virtue of statewide franchises, specific franchise agreements, encroachment permits issued by Local Agency, common use agreements, or under the auspices of other legal instrument. Such utilities may be operated under regulations of the California Public Utilities Code (“CPUC”) and referred to as “Utilities”, as defined herein; and

WHEREAS, Authority is currently engaging in a program that has various projects under current provisions of Section 2704.04 of the Streets & Highways Code and Sections 185030 and 185511 of the Public Utilities Code throughout the State of California identified as the California High-Speed Rail Projects hereinafter referred to as the “HSR Project,” and from time to time the HSR Project involves constructing, reconstructing, or otherwise changing an existing improvement or installing a new improvement where Facilities of Local Agency are located; and

WHEREAS, HSR Project may require the protection, relocation, installation, or removal of the Facility, or some combination thereof, including any submittal review, inspection, environmental mitigation, certification or other oversight activity; and

WHEREAS, protection, relocation, installation or removal of Facilities may impact Local Agency; and

WHEREAS, Authority and Local Agency desire to enter into an agreement which establishes the contractual terms and conditions applicable to the Facility Work;

NOW AND THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Local Agency agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms have the following meanings:

- 1.1. Authority's Contractor. "Authority's Contractor" means a company, joint venture, partnership, limited liability company, or person that enters into a contract with the Authority for the performance of Facility Work or any other work.
- 1.2. Betterment. "Betterment" shall mean any upgrading of a replacement Facility that is made solely for the benefit of and at the election of the Local Agency, including an increase in the capacity, capability, level of service, efficiency, duration or function of the replacement Facility over that which was provided by the existing Facility; provided, however, that the following are not considered Betterments in such cases:

Any upgrading necessary for safe and effective construction of the HSR Project; replacement devices or materials that meet equivalent standards although they are not identical; replacement devices or materials no longer regularly manufactured with the next highest grade or size; any upgrading required by applicable laws; replacement devices or materials which are used for reasons of economy (e.g. non-stocked items may be uneconomical to purchase); or any upgrading required by the applicable standard specifications, standards of practice and construction methods applied to comparable facilities constructed by or for the Local Agency at its own expenses, which are in effect as of the date of execution of the applicable Grade Separation Agreement and/or Utility Agreement.
- 1.3. Grade Separation Agreement. "Grade Separation Agreement" means any agreement executed by Authority and Local Agency detailing the design and maintenance specific to a particular grade separation.
- 1.4. Utility Agreement. "Utility Agreement" means a subsequent agreement by which the Authority or Authority's Contractor provides the Local Agency funds and/or sets forth, among other things, the schedule, cost, cost apportionment, billing, payment, documentation, documentation retention, accounting and coordination as it relates to the Facility Work.
- 1.5. Days. "Days" means calendar days, unless otherwise stated.
- 1.6. Facility. "Facility" or "Facilities" means any road, street, bridge, or grade separation owned and operated by Local Agency. The term "Facility" or "Facilities" includes traffic signals, street lights, and railroad crossing equipment associated with roads, streets, bridges and/or grade separations, as well as any electrical conduits and feeds providing service to such facilities. For this purpose, all electrical lines that connect (directly or indirectly) to traffic signals, street lights, crossing equipment, communication facilities owned or used by Local Agency, Local Agency irrigation controller equipment, or Local Agency transit shelters shall be deemed to provide service to such facilities. Electrical transmission facilities not serving said Facilities are not covered under the terms of this section.
- 1.7. Facility Work. "Facility Work" means all those activities related to the Relocation of a Local Agency's Facilities.

- 1.8. Hazardous Material.** “Hazardous Material(s)” means any hazardous substance, hazardous material, or hazardous waste as defined under state or federal law and/or any substance, material, waste or other material of any nature whatsoever which may give rise to liability under state or federal law.
- 1.9. High-Speed Rail Property.** “High-Speed Rail Property” means any real property or an interest therein, including any right-of-way, previously or hereafter acquired by the Authority.
- 1.10. HSR Project.** “HSR Project” refers to the projects under current provisions of Section 2704.04 of the Streets & Highways Code and Sections 185030 and 185511 of the Public Utilities Code.

Any portion of the HSR Project for which design and construction work, including Facility Work, is performed, managed, contracted or directed (by Notice to Owner or otherwise) by another State agency, local government or local agency, directly or indirectly, is specifically excluded from the definition of HSR Project.

- 1.11. HSR Right-of-Way.** “HSR Right-of-Way” means any access controlled right-of-way for the HSR Project.
- 1.12. Notice to Owner.** “Notice to Owner” means written notice from the Authority to Local Agency for the Relocation of Facilities, demanding Local Agency to remove, protect, alter, replace, reconstruct, support, or any other rearrangement or modification, the specifically identified Facilities to accommodate a particular segment of the proposed HSR Project.
- 1.13. Partners.** “Partners” means cities, counties, the Authority, the Authority’s Contractor, and any other third party entities affected by the HSR Project, including regulatory agencies, local agencies, and public and private facility owners.
- 1.14. Party.** “Party” refers to the Authority or the Local Agency, as the context may require and “Parties” means the Authority and the Local Agency, collectively.
- 1.15. Railroad Right-of-Way.** “Railroad Right-of-Way” means the right-of-way of any rail line registered with the California Public Utilities Commission, except for High-Speed Rail right-of-way.
- 1.16. Relocation.** “Relocation” means alteration, removal, relocation, replacement, reconstruction, support, abandonment, protection or any other rearrangement of Facilities that are necessary in order to accommodate or permit construction of the HSR Project.
- 1.17. Right-of-Way of Local Agency.** “Right-of-Way of Local Agency” means a property right held by the Local Agency in the form of either a recorded or fully executed deed in the usual form or other recorded, fully executed valid instrument that conveys a permanent property right to the Local Agency for the Facility to be located in a defined area of real property or prescriptive rights, including but not limited to a defined area within High-Speed Rail Property that is subject to a recorded Joint Use Agreement (JUA) or Consent To Common Use Agreement (CCUA).
- 1.18. Utility.** “Utility” refers to any pole, pole line, pipeline, conduit, cable, aqueduct, or other structure used for public or privately owned utility services, or used by a mutual organization supplying water or telephone services to its members.

2. SCOPE OF WORK

2.1. Work to be Completed

The work actually performed under this Agreement shall be all work necessary to accomplish Relocation of existing Facilities as necessitated by Authority's HSR Project.

A. Road Closures

Roads to be closed are identified in Appendix A.

B. Facility Work

Facility Work specific to any road closures do not require a Utility Agreement and will be performed pursuant to all of the applicable Local Agency's standards, including but not limited to the standards detailed in Appendix A, unless otherwise agreed to by the Parties in writing. Other Facility Work will be detailed in subsequently executed Utility Agreement(s).

C. Utility Agreement

Authority and Local Agency will enter into a Utility Agreement which will set forth, among other things, scope of work, schedule, cost, cost apportionment, billing, payment, documentation, documentation retention, accounting and coordination as it relates to Facility Work.

D. Betterment

Any work considered Betterment shall be agreed upon in advance by the Parties and detailed in a Grade Separation and/or Utility Agreement along with costs and allocation of responsibility for such costs to the Local Agency.

2.2. Performance of Work

All Facility Work or portion thereof may be performed by the Local Agency or the Authority. Specific procedures that shall be followed in performance of Facility Work, along with costs and division of responsibility for cost, for the various portions of Facility Work shall be detailed in a Grade Separation Agreement and/or Utility Agreement for that work.

A. Authority Performs Work

When all or a portion of Facility Work is to be performed by the Authority, the Local Agency shall have access to all phases of Facility Work for the purpose of inspection to ensure that the work is completed in accordance with the Grade Separation Agreement and/or Utility Agreement(s).

The Authority shall submit a written notice of substantial completion of Facility Work to the Local Agency.

Upon receipt of the written notice of substantial completion of Facility Work from the Authority, Local Agency shall accept ownership and maintenance of the constructed Facilities.

B. Local Agency Performs Facility Work

When all or a portion of the Facility Work is to be performed by the Local Agency, the Local Agency agrees to provide and furnish all necessary labor, materials, tools, and equipment required, and to execute said work diligently to completion and to: (i) perform work with its own forces, or (ii) cause the work to be performed by a contractor, employed by Local Agency pursuant to a written contract, or (iii) cause the work to be performed through a contract with a qualified bidder, selected pursuant to a valid competitive bidding procedure to perform work of this type.

Upon the issuance of a Notice to Owner, or as otherwise agreed upon in the specific Grade Separation and/or Utility Agreement, the Local Agency shall diligently undertake, or cause to be undertaken, the Facility Work in accordance with the agreed upon schedule.

The Local Agency shall submit a written notice of completion of Facility Work to the Authority within 30 days of the completion of the Facility Work.

2.3. Partnering

In signing this Agreement, the Local Agency agrees to collaborate with the Authority, the Authority's Contractor (if applicable), and any other affected third-party entities, including regulatory agencies, local agencies, and other facility owners, hereinafter referred to as "Partners", to identify collaborative methods for resolving issues that may arise as part of the Facility Work.

Partners will attend an initial kick-off workshop as well as subsequent periodic meetings as scheduled throughout the duration of the HSR Project. During the initial workshop, Partners will develop procedures and agreements (including Construction and Maintenance Agreements) as specified in Appendix B, "PARTNERING," incorporated herein, facilitating the collaborative relationship and aid in identifying and resolving issues as they arise.

Reimbursement to the Local Agency for the cost of participation in the initial workshop and subsequent partnering meetings shall be made by either the Authority or the Authority's Contractor, to be determined by Authority.

Subject to the requirements of the California Public Records Act and to the extent permitted by law, neither the language of this clause, including the language in Appendix B, nor any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall be admissible or discoverable in any judicial or other dispute resolution proceeding.

3. LIABILITY AND PAYMENT FOR WORK

3.1. Liability

A. Unless otherwise agreed to, liability for the cost of Facility Work shall be determined as follows:

- i. When the Authority requires Local Agency to remove any Facility lawfully maintained in any High-Speed Rail Property to a location entirely outside High-Speed Rail Property, the Authority shall pay the reasonable and necessary cost of the removal. This includes both the

cost of removal and the cost of Relocation to a new location outside of the High-Speed Rail Property.

- ii. When the Authority requires Local Agency to remove any Facility lawfully maintained outside High-Speed Rail Property to another location entirely outside High-Speed Rail Property, the Authority shall pay the reasonable and necessary cost of removal. This includes the cost of removal and the cost of Relocation to a new location outside of the High-Speed Rail Property.
- iii. The Local Agency shall pay the reasonable and necessary cost of removal when the Relocation of a Facility from one point in High-Speed Rail Property to another point in that property, including Relocation in any service road of the High-Speed Rail Property or from one point of crossing of the High-Speed Rail Property to another reasonable point of crossing. This includes the cost of removal and the cost of Relocation to another point in High-Speed Rail Property.
- iv. When the Authority requires a publicly owned Facility to relocate within High-Speed Rail Property any Facility lawfully maintained in that property that was not used for high-speed rail purposes at the time the Facility was originally installed, the Authority shall pay the cost of Relocation.
- v. A permit containing a contractual obligation that was accepted by the Local Agency for maintenance or minor improvement of the Facility after the property became High-Speed Rail Property shall not constitute a contractual obligation to relocate a Facility at its own expense within the meaning of this section.
- vi. Publicly owned sewers and fire hydrants and any street lighting structure, whether publicly or privately owned, in any High-Speed Rail Property shall be relocated, where necessary, at the expense of the Authority.

B. Nevertheless, Local Agency will be liable for Facility work where:

- i. Facility Work is a Betterment; or
- ii. The Local Agency is unable to produce documentation of Right-of-Way of Local Agency's where its Facility is located.

3.2. Cost of Facility Work

If the Authority has cost liability, then reimbursable costs shall be the costs of actual and necessary Facility Work including reasonable and actual indirect and overhead charges attributable to that work, and any necessary new private Facility right-of-way required to perpetuate existing rights involved in the Relocation, except:

A. The Authority shall be entitled to credits as follows:

- i. The amount of any Betterment.
- ii. If a new Facility or portion thereof is constructed to accomplish such Relocation, an amount bearing the same proportion to the original cost of the displaced Facility or portion thereof as its age bears to its normal expected life.

3.3. Claims by the Authority's Contractor

In the event the Authority's Contractor makes any claim against the Authority relating to Facility Work, the Authority will notify the Local Agency of the claim and the Local Agency will cooperate with the Authority in assessing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the Local Agency and the Authority's Contractor shall be in writing, shall be subject to written concurrence by the Authority, and shall specify the extent to which it resolves the claim against the Authority.

Since Facility Work may be reimbursable to the Local Agency under this Agreement, the Authority may withhold reimbursement to the Local Agency until final resolution (including any actual payment required) of all claims relating to Facility Work. The right to withhold shall be limited to actual claim payments made by the Authority to the Authority's Contractor.

3.4. Hazardous Materials

Upon discovery of Hazardous Material in connection with the Relocation, both Local Agency and Authority shall immediately confer to explore all reasonable alternatives and agree on a course of action.

Authority will pay, in its entirety, those costs for additional necessary effort undertaken by Local Agency to comply with existing statutes or regulations concerning the disposition of Hazardous Material found as a consequence of that Relocation, unless such conditions are attributable to Local Agency's existing installation or operation.

Each Party to this Agreement retains the right to pursue recovery of its share of any such Hazardous Material related costs from the other Party or third parties in accordance with law.

4. DISPUTES

The Authority and the Local Agency agree that, as a general principle, the Parties shall identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes through a process involving partnering, collaboration and cooperation, which shall attempt to identify and resolve potential disputes without resort to formal legal process. Such process shall include establishing for each phase of the HSR Project impacting Facilities a hierarchy of individuals within each Party's organization to whom issues may be addressed as they arise in order to resolve such issues before they are elevated to the next level in the hierarchy, and periodic meetings at the request of either Party to review the ongoing status of the HSR Project and the Facility Work.

In the event the Local Agency disagrees with a determination or direction made by the Authority in connection with the Facility Work, the Local Agency shall provide prompt written notice of its objection to Authority, including the reasons for such objection. Thereafter, the Parties shall attempt to resolve the potential dispute through the partnering process, which may include escalation through the hierarchy established for the partnering process, at either Party's request. If the dispute persists after the conclusion of such partnering, then the Local Agency may request a written statement from the Authority concerning its decision. The request must be made within 14 days after the conclusion of such partnering. The request shall clearly state, and in detail, the basis for the objection, a statement of the facts asserted, and the nature and amount of the costs involved. The Authority shall provide written notice of such decision, including a copy to the Local Agency. Authority's failure to provide a written decision shall be deemed denial of Local Agency's objection. The Authority's decision shall be final

and conclusive unless, the Local Agency appeals such decision by written notice to the Authority, on or before 28 days from the date of such decision, or if no written decision is received from the Authority, 42 days from the Local Agency's written objection.

If the Local Agency appeals the Authority's decision, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. The Authority shall either issue a modified decision within two weeks from the date of the hearing, or if no hearing is requested then from the date of Local Agency's notice of appeal, such prior decision shall be deemed affirmed.

At all times during the course of the dispute resolution process, the Local Agency shall continue with or permit the continuance of the Facility Work as directed, in a diligent manner, and without delay; shall conform to any of the Authority's responses, decisions, or orders; and shall be governed by all applicable provisions of this Agreement. Records of the Facility Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in this Agreement irrespective of the ultimate outcome of any dispute.

5. GENERAL CONDITIONS

5.1. Default

In the event that the Authority breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement or by law, the Local Agency may pursue a claim for damages.

In the event that the Local Agency breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement or by law, the Authority may exercise one or more of the following options:

- A. Pursue a claim for damages suffered by the Authority.
- B. Perform any work with its own forces or through Authority's Contractor and seek repayment for the cost thereof.

5.2. Termination

Either Party, upon six month's written notice, may terminate this Agreement, except that, notwithstanding that termination, the provisions of this Agreement shall remain in full force and effect with respect to any Relocation of Facilities required under a Grade Separation/Utility Agreement/Notice to Owner issued prior to the Agreement termination.

5.3. Indemnification

A Party ("Indemnifying Party") shall hold harmless, and indemnify the other Party ("Indemnified Party") and its respective governing Boards, officers, directors, employees, authorized agents, engineers, contractors or subcontractors from and against any and all claims, damages, losses, liabilities, costs, and expenses that arise out of or as a result of any negligent act or omission or willful misconduct of the Indemnifying Party or its officers, agents, employees, engineers, contractors or subcontractors in carrying out Indemnifying Party's obligations under this Agreement for the performance of Facility Work, except to the extent that such expense, liability or

claim is proximately caused by the negligence or willful misconduct of the Indemnified Party or their respective agents and servants who are directly responsible to such Indemnified Party.

5.4. Affected Facility and Right of Way

Whenever affected Facilities will remain within the existing Right-of-Way of Local Agency and these Facilities will fall within the High-Speed Rail right-of-way, Authority and Local Agency shall execute an easement or a Consent to Common Use Agreement which shall also confirm any prior rights held by Local Agency in said Right-of-Way of Local Agency.

Whenever affected Facilities will be relocated from the existing Right-of-Way of Local Agency to a new location that falls outside such existing Right-of-Way of Local Agency and not in Railroad Right-of-Way or in public right-of-way, the Authority shall convey a new right-of-way for such relocated Facilities as will correspond to the existing Right-of-Way of Local Agency. For such Relocations, the Authority shall issue, or cause to be issued, to Local Agency, without charge to Local Agency or credit to Authority, appropriate replacement rights in the new location mutually acceptable to both Authority and Local Agency for those rights previously held by Local Agency in its existing private right-of-way. In discharge of Authority's obligations under this Paragraph, in the event that the new location falls within the High-Speed Rail right-of-way, Authority and Local Agency shall execute a Joint Use Agreement for joint use of said new area which agreement shall also confirm any prior rights held by Local Agency in said Right-of-Way of Local Agency. In consideration for these replacement rights being issued by Authority, Local Agency shall subsequently convey to Authority, or its nominee, within Authority's right-of-way, all of its corresponding right, title and interest within Local Agency's existing private right-of way so vacated.

If the existing Right-of-Way of Local Agency includes fee title, Authority shall acquire from Local Agency, for just compensation under State law, those property rights required by Authority for the public railway by separate transaction, leaving to Local Agency those remaining property rights appropriate for the placement and operation of Facilities in the Right-of-Way of Local Agency.

If any replacement real property rights are required in Railroad Right-of-Way, then the Authority will make reasonable efforts to obtain those rights for the Local Agency. Nevertheless, if Authority cannot obtain those replacement real property rights Local Agency shall obtain those rights.

5.5. Applicability

Except as otherwise provided, this Agreement applies to the Relocation of Facilities to accommodate or permit construction of the HSR Project.

5.6. Modification.

This Agreement may be amended, changed or altered by mutual consent of the Parties in writing.

5.7. Severability.

Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

5.8. Time is of the Essence.

Time shall be of the essence of this Agreement.

5.9. Successors and Assigns.

This Agreement shall inure to the benefit of, and shall be binding upon, the successors and assigns of the Parties.

5.10. Agreement Final Expression of the Parties.

This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter and supersedes all prior agreements, understandings, or negotiations.

5.11. Governing Law and Venue

This Agreement shall be governed by the laws of the State of California. Any provision herein found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions herein.

Venue for any action shall lie exclusively in Sacramento County, California pursuant to Public Utilities Code Section 185038.

5.12. Audits

Local Agency agrees that the Authority, the Department of General Services, the State Auditor, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Local Agency agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Local Agency agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Local Agency agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, CCR Title 2, Section 1896).

5.13. Notices

All required notices may be sent by first class United States Mail, hand delivery, or express mail. Each Party shall have a continuing obligation to notify the other Party of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

If to LOCAL AGENCY:

County of Tulare:	RESOURCE MANAGEMENT AGENCY
Person in Charge:	Michael C. Spata, Director
Address:	5961 South Mooney Boulevard
	Visalia, CA 93277

If to AUTHORITY:

Authority:	CALIFORNIA HIGH-SPEED RAIL AUTHORITY
Person in Charge:	Thomas Fellenz, Chief Counsel
Address:	770 L Street, Suite 800
	Sacramento, CA 95814

5.14. State and Federal Grant Conditions

No State or Federal funds or resources are allocated or encumbered as against this Agreement and Authority's obligations and duties expressed herein are conditioned upon sufficient funds being made available to the Authority by the California State Legislature or the United States Government for the purpose of the HSR Project.

Parties agree that Utility Agreements and other agreements requiring payment from the Authority will be subject to additional State and Federal requirements.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement effective the day and year last written below.

COUNTY OF TULARE:

By _____	_____
Steve Worthley	Date
Chairman, Tulare County Board of Supervisors	

Approved as to form:

By _____
Jennifer McNichols Neilsen
Deputy County Counsel

CALIFORNIA HIGH-SPEED RAIL AUTHORITY

By _____	_____
Frank Vacca	Date:
Chief Program Manager	

Approved as to form:

By _____	_____
Thomas Fellenz	Date:
Chief Counsel	

APPENDIX A

LOCAL AGENCY'S SPECIAL CONDITIONS

1. DESIGN STANDARDS

Authority's Contractor shall conform to the following Facility Work standards and criteria.

- A. The following roads will be grade separated: Avenue 24, Avenue 56 (County Road J22), Avenue 88, Avenue 120 (Hesse Ave.) and Avenue 136.
- B. The following road(s) will be closed: Avenue 108 (Angiola Drive), Avenue 112, and Avenue 128. The grade separations identified in item A above will be constructed prior to the closure of any roads, unless otherwise agreed to by the Parties in writing.
- C. Unless otherwise agreed to in this Agreement or other written agreements by the Parties, the County of Tulare Improvement Standards ("COTIS") or the American Association of State Highway and Transportation Officials ("AASHTO") will be applied to the Facility Work. In the event of a conflict between COTIS and AASHTO, the more stringent standard shall apply.

APPENDIX B

PARTNERING

In order to effectively accomplish the HSR Project, a collaborative relationship will be formed as agreed to by Parties in Section 2.3 “PARTNERING” As part of this collaborative relationship, a cooperative management team will be developed to achieve a quality project within budget and on schedule. Collaboration is strongly encouraged in preference to formal dispute resolution and adjudication mechanisms. Collaboration in this context is intended to be mandatory, but non-binding. The identified procedures will be available for use by the Partners to resolve issues that may arise during the performance of Facility Work.

1. INITIAL KICK-OFF WORKSHOP

In order to achieve effective and efficient completion of the HSR Project the Partners agree to conduct a kick-off workshop where they will identify issues for resolution that are present or foreseeable and engage in joint problem solving and action planning on the issues identified.

At a minimum, during this workshop, participants will develop the following procedures and agreements to facilitate the collaborative relationship and aid in identifying and resolving issues as they may arise throughout the HSR Project:

“Issues Resolution Ladder” (IRL) – a hierarchy of those individuals within the HSR Project including the Partners and extending across organizational boundaries to address issues as they arise to facilitate communication and address issues before those issues are elevated to the next ladder rung.

“Partnering Implementation Plan” (PIP) – the intention of the PIP is to sustain the collaborative relationship after the kick-off meeting by establishing monthly or quarterly schedule of partnering meetings and any procedures necessary for the identification and resolution of any issues during the performance of the Facility Work to be addressed by the Partners.

“Partner” – the charter will express the vision for the project, a statement of mutual goals and positive behavior practices and will be a visual reminder of mutual commitment to the partner vision, goals and relationship. The charter will be signed by all Partners.

2. PARTNERING MEETINGS

The purpose of the partnering meetings will be to evaluate the efficacy of the collaborative relationship and review its processes as necessary to improve or correct any procedures/practices and efficiently identify and resolve the issues.